

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.205 of 2016**

Shyama Sahu, S/o Bhojram Sahu, aged about 40 years, R/o Village Semipali, Police Station Urga, District Korba, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Station House Officer, Police Station Urga, District Korba, Chhattisgarh

--- Respondent

For Appellant	:	Ms. Nirupama Bajpai, Advocate
For Respondent	:	Ms. Shriya Mishra, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board**

16.7.2019

- The instant appeal has been preferred against the judgment dated 21.1.2016 passed by the Additional Sessions Judge (FTC), Korba in Sessions Trial No.49 of 2014, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 450 of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.5,000/- with default stipulation
Under Section 376 of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.5,000/- with default stipulation
Under Section 506B of the Indian Penal Code	Rigorous Imprisonment for 3 years and fine of Rs.3,000/- with default stipulation

- Case of the prosecution, in brief, is that the prosecutrix (PW2) is a married woman. The Appellant is *jeth* (brother-in-law) of the prosecutrix. The prosecutrix was residing with her family at Village Semipali. Her husband Ramakant Sahu (PW5) was engaged in selling articles in local fair. On 7.1.2014, husband of the prosecutrix had gone to Village Pantora for selling articles. The

prosecutrix was alone at home. At about 7 p.m., she was feeding her 2 years' old daughter. The Appellant entered her house and caught the prosecutrix with bad intention. When she opposed, he threatened her of life and committed forcible sexual intercourse with her. Thereafter, he fled threatening her that if she discloses the incident, he will kill her. Immediately after the incident, she narrated about it to Tij Kunwar (PW4), who was residing in front of her house. She also informed about the incident to her mother-in-law and father-in-law as also to a Village Panch Anita Sahu (PW1). On the next day, when her husband returned home, she narrated him the incident. Thereafter, on 10.1.2014, First Information Report (Ex.P2) was lodged by her. She was medically examined by Dr. Hemu Tandon. His report is Ex.P8. The Appellant was medically examined by Dr. O.S. Kanwar (PW6). His report is Ex.P6 in which he opined that the Appellant was capable to perform sexual intercourse. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellant for offence punishable under Sections 376 and 450 of the Indian Penal Code. The Trial Court framed charges against the Appellant for offence punishable under Sections 450, 376 and 506B of the Indian Penal Code. In support of its case, the prosecution examined as many as 12 witnesses. In his statement under Section 313 of the Code of Criminal Procedure, the Appellant denied the guilt. No witness has been examined in his defence. After trial, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.

3. Learned Counsel appearing for the Appellant submits that the

judgment of the Trial Court is based on surmises. As per the medical report, no external or internal injury was found on the body of the prosecutrix. Report in the police station was made by her after 3 days of the incident. Delay in lodging report has not been properly explained by her. It is further submitted that the Appellant is elder brother of the husband of the prosecutrix and they have a land dispute and due the dispute the Appellant has been falsely implicated in the case. The Trial Court has ignored the evidence in this regard. Hence, she prays for acquittal of the Appellant.

4. On the contrary, Learned Counsel appearing for the State supports the impugned judgment.
5. I have heard Learned Counsel appearing for the parties and perused the record with due care.
6. The conviction of the Appellant is based upon the statements of the prosecutrix (PW2) and her neighbour Tij Kunwar (PW4) and other corroborative evidence.
7. The prosecutrix (PW2), in her Court statement, has stated that on the date of incident, her husband had gone out to sell goods and, therefore, he was not present at home. At about 7:00 p.m., she was feeding her son. The Appellant came inside her room and committed forcible sexual intercourse with her. When she tried to oppose him, he gagged her mouth with his hands. She has further deposed that the Appellant committed rape with her after dragging her from the bed to the floor. After the incident, the Appellant went out then she told about the incident to nearby residents and also told to her in-laws in the same night. On the next day, when her husband returned home, she told him about the incident and also

told to other family members and thereafter the FIR (Ex.P2) was lodged by her. In her cross-examination, she has remained firm. Her above statement is duly corroborated by Tij Kunwar (PW4). Tij Kunwar has also deposed that on the date of incident at about 8-8:30 p.m., running, the prosecutrix came to her. At that time, the prosecutrix was afraid. On being asked, the prosecutrix told her that the Appellant had committed rape with her. Tij Kunwar has also remained firm during her cross-examination. Village Panch Anita Sahu (PW1) has also admitted the fact that it was spread in the village that the prosecutrix was raped. This statement of Anita Sahu is also not rebutted.

8. Though Bhojram Sahu (PW3), father-in-law of the prosecutrix has not further supported the case of the prosecution and turned hostile, he has deposed that on the next day a meeting had taken place in the village in which he had heard that the Appellant had caught the prosecutrix and the prosecutrix had called her family members from her maternal house and a meeting had taken place in the village.
9. Ramakant Sahu (PW5), husband of the prosecutrix, has deposed that on the next day of the incident, when he returned home in the morning, the prosecutrix told him about the incident. Parents of the prosecutrix also came to his house and thereafter a village meeting took place. Thereafter, they went to lodge a report.
10. Dr. O.S. Kanwar (PW6) is the witness who examined the Appellant. His report is Ex.P6 in which he has opined that the Appellant was capable to perform sexual intercourse.
11. Head Constable Smt. Savitri Raj (PW7) is the witness who partly

investigated into the offence in question. Dr. J.P. Kaushik (PW9) proved the report (Ex.P8) of medical examination of the prosecutrix conducted by Dr. Hemu Tandon. As opined by Dr. Hemu Tandon, the prosecutrix was habitual to sexual intercourse and, therefore, he was unable to give any definite opinion regarding recent sexual intercourse with her.

12. Inspector S.K. Pathak (PW11) investigated the offence in question. As deposed by him, he prepared inquest (Ex.P4) and recorded statements of witnesses under Section 161 of the Code of Criminal Procedure.
13. It is clear that the prosecutrix (PW2) has categorically stated that at the time of incident she was alone at her house and was feeding her child. At that time, the Appellant entered her house and committed forcible sexual intercourse with her. This witness has remained firm during her cross-examination. Her statement is duly corroborated by Tij Kunwar (PW4). Just after the incident, the incident was narrated by the prosecutrix to Tij Kunwar. Tij Kunwar has also remained firm during her cross-examination. From the statements of Anita Sahu (PW1) and Bhojram Sahu (PW3), who is father-in-law of the prosecutrix and father of the Appellant, it is clear that it had spread in the village that such an incident had taken place and a village meeting in this regard had also taken place. Though FIR (Ex.P2) was lodged on 10.1.2014, i.e., after 3 days of the incident, delay in lodging the FIR has been properly explained by the prosecutrix as well as by her husband Ramakant Sahu (PW5). Though Ramakant Sahu (PW5) has admitted that he had a land dispute with the Appellant, there is no reason available on record to believe that the Appellant has been falsely implicated

in this case due to the land dispute. From the above, it is established that the Appellant has committed the offence and the prosecution has been able to prove the offence. Hence, the Trial Court has rightly convicted the Appellant. Therefore, the conviction imposed upon him is affirmed. The sentence awarded to him is also just and proper.

- 14.** Consequently, the appeal is dismissed. The impugned judgment of conviction and sentence is affirmed.
- 15.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge